IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3958 OF 2006

IN

SUIT NO.1562 OF 1978

Rustom D.Dalal & Ors. .. Plaintiffs.

Versus

Union of India & Ors. .. Defendants.

And

Twin Garden Co.Operative Housing
Society Ltd. & Anr. .. Respondents.

Mr.Chirag Balsara i/b.Harakhchand & Co. for plaintiffs.
Mr.P.G.Sawant, A.G.P. for respondent Nos.5 to 7.
Mr.R.Y.Shirsikar for respondent No.2 (B.M.C.).
Ms.S.John i/b.M.P.Savla & Co. for respondent No.1 Society.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 30th JULY, 2007.

P.C.:

1. Mr.Balsara, appearing for the original plaintiffs, who have moved the present Notice of Motion submits that

the Notice of Motion seeks modification of an order passed by this Court, which is an interim order in Notice of Motion No.87 of 1979. He submits that respondent No.1 Society had moved an application earlier, which application was rejected on the ground that 1st respondent has no locus to file any application in the present suit. He submits that present application is necessitated because the subject building has completely caved in and needs to be reconstructed as the 1st respondent's members are homeless. He states that there are obligations inter se between the plaintiffs and the 1st respondent, which have to be abided by but considering the interim order in the present suit, those obligations cannot be discharged by either of them. He submits that one more reason why the same cannot be discharged is because, the Bombay Municipal Corporation is insisting upon a No Objection Certificate from the defendant Nos.1 to 3 to the present suit.

2. After having perused the said Motion, I brought to the notice of Mr.Balsara the fact that the Notice of Motion seeks permission in favour of the 1st respondent for demolition, reconstruction / re-development of the existing building as per the Municipal Rules and Regulations, which relief cannot be granted in favour of

the 1st respondent Society by this Court in the present suit.

3. Pursuant to the application of Mr.Balsara, Notice of Motion is allowed to be withdrawn with liberty to adopt appropriate proceedings for the relief that is claimed in this Notice of Motion and more particularly prayer clauses (b) and (c) thereof.

(S.C.Dharmadhikari, J.)